

**BEFORE THE
BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Statement of Issues Against:

Case No. 4167

YEE XIONG
212 E. 11th Street
Marysville, CA 95901

Applicant for Pharmacy Technician License

Respondent.

DECISION AND ORDER

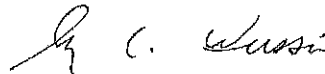
The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Pharmacy, Department of Consumer Affairs, as its Decision in this matter.

This decision shall become effective on September 14, 2012.

It is so ORDERED on August 15, 2012.

BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

By



STANLEY C. WEISSER
Board President

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9 **BEFORE THE**
BOARD OF PHARMACY
10 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

11 In the Matter of the Statement of Issues
Against:

12 **YEE XIONG**
13 **212 E. 11th Street**
14 **Marysville, CA 95901**

15 **Pharmacy Technician License**

16 Respondent.

Case No. 4167

OAH No. 2012020621

STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER

17
18 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-
19 entitled proceedings that the following matters are true:

20 **PARTIES**

21 1. Virginia Herold (Complainant) is the Executive Officer of the Board of Pharmacy
22 (Board). She brought this action solely in her official capacity and is represented in this matter by
23 Kamala D. Harris, Attorney General of the State of California, by Brian S. Turner, Deputy
24 Attorney General.

25 2. Respondent Yee Xiong (Respondent) is representing himself in this proceeding and
26 has chosen not to exercise his right to be represented by counsel.

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CONTINGENCY

10. This stipulation shall be subject to approval by the Board. Respondent understands and agrees that counsel for Complainant and the staff of the Board may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

11. The parties understand and agree that facsimile and/or email copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

12. This Stipulated Settlement and Disciplinary Order is intended by the parties to be an integrated writing representing the complete, final, and exclusive embodiment of their agreement. It supersedes any and all prior or contemporaneous agreements, understandings, discussions, negotiations, and commitments (written or oral). This Stipulated Settlement and Disciplinary Order may not be altered, amended, modified, supplemented, or otherwise changed except by a writing executed by an authorized representative of each of the parties.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Respondent Yee Xiong that Pharmacy Technician License will be issued and immediately revoked. The revocation will be stayed and the Respondent placed on three (3) years probation on the following terms and conditions.

1. **Obey All Laws**

Respondent shall obey all state and federal laws and regulations.

Respondent shall report any of the following occurrences to the board, in writing, within seventy-two (72) hours of such occurrence:

- ☐ an arrest or issuance of a criminal complaint for violation of any provision of the Pharmacy Law, state and federal food and drug laws, or state and federal controlled substances laws
- ☐ a plea of guilty or nolo contendere in any state or federal criminal proceeding to any criminal complaint, information or indictment
- ☐ a conviction of any crime
- ☐ discipline, citation, or other administrative action filed by any state or federal agency which involves respondent's Pharmacy Technician license or which is related to the practice of pharmacy or the manufacturing, obtaining, handling, distributing, billing, or charging for any drug, device or controlled substance.

Failure to timely report any such occurrence shall be considered a violation of probation.

2. Report to the Board

Respondent shall report to the board quarterly, on a schedule as directed by the board or its designee. The report shall be made either in person or in writing, as directed. Among other requirements, respondent shall state in each report under penalty of perjury whether there has been compliance with all the terms and conditions of probation. Failure to submit timely reports in a form as directed shall be considered a violation of probation. Any period(s) of delinquency in submission of reports as directed may be added to the total period of probation. Moreover, if the final probation report is not made as directed, probation shall be automatically extended until such time as the final report is made and accepted by the board.

3. Interview with the Board

Upon receipt of reasonable prior notice, respondent shall appear in person for interviews with the board or its designee, at such intervals and locations as are determined by the board or its designee. Failure to appear for any scheduled interview without prior notification to board staff, or failure to appear at two (2) or more scheduled interviews with the board or its designee during the period of probation, shall be considered a violation of probation.

1 **4. Cooperate with Board Staff**

2 Respondent shall cooperate with the board's inspection program and with the board's
3 monitoring and investigation of respondent's compliance with the terms and conditions of his
4 probation. Failure to cooperate shall be considered a violation of probation.

5 **5. Notice to Employers**

6 During the period of probation, respondent shall notify all present and prospective
7 employers of the decision in case number 4167 and the terms, conditions and restrictions imposed
8 on respondent by the decision, as follows:

9 Within thirty (30) days of the effective date of this decision, and within fifteen (15) days of
10 respondent undertaking any new employment, respondent shall cause his direct supervisor,
11 pharmacist-in-charge (including each new pharmacist-in-charge employed during respondent's
12 tenure of employment) and owner to report to the board in writing acknowledging that the listed
13 individual(s) has/have read the decision in case number 4167 and the terms and conditions
14 imposed thereby. It shall be respondent's responsibility to ensure that his employer(s) and/or
15 supervisor(s) submit timely acknowledgement(s) to the board.

16 If respondent works for or is employed by or through a pharmacy employment service,
17 respondent must notify his direct supervisor, pharmacist-in-charge and owner at every pharmacy
18 of the terms and conditions of the decision in case number 4167 in advance of the respondent
19 commencing work at each pharmacy. A record of this notification must be provided to the board
20 upon request.

21 Furthermore, within thirty (30) days of the effective date of this decision, and within fifteen
22 (15) days of respondent undertaking any new employment by or through a pharmacy employment
23 service, respondent shall cause his direct supervisor with the pharmacy employment service to
24 report to the board in writing acknowledging that he has read the decision in case number 4167
25 and the terms and conditions imposed thereby. It shall be respondent's responsibility to ensure
26 that his employer(s) and/or supervisor(s) submit timely acknowledgment(s) to the board.

27 Failure to timely notify present or prospective employer(s) or to cause that/those
28 employer(s) to submit timely acknowledgements to the board shall be considered a violation of

1 probation.

2 "Employment" within the meaning of this provision shall include any full-time,
3 part-time, temporary or relief service or pharmacy management service as a pharmacy
4 technician or in any position for which a pharmacy technician license is a requirement
5 or criterion for employment, whether the respondent is considered an employee,
6 independent contractor or volunteer.

7 **6. Probation Monitoring Costs**

8 Respondent shall pay any costs associated with probation monitoring as determined by the
9 board each and every year of probation. Such costs shall be payable to the board on a schedule as
10 directed by the board or its designee. Failure to pay such costs by the deadline(s) as directed shall
11 be considered a violation of probation.

12 **7. Status of License**

13 Respondent shall, at all times while on probation, maintain an active, current pharmacy
14 technician license with the board, including any period during which suspension or probation is
15 tolled. Failure to maintain an active, current license shall be considered a violation of probation.

16 If respondent's pharmacy technician license expires or is cancelled by operation of law or
17 otherwise at any time during the period of probation, including any extensions thereof due to
18 tolling or otherwise, upon renewal or reapplication respondent's license shall be subject to all
19 terms and conditions of this probation not previously satisfied.

20 **8. License Surrender While on Probation/Suspension**

21 Following the effective date of this decision, should respondent cease work due to
22 retirement or health, or be otherwise unable to satisfy the terms and conditions of probation,
23 respondent may tender his pharmacy technician license to the board for surrender. The board or
24 its designee shall have the discretion whether to grant the request for surrender or take any other
25 action it deems appropriate and reasonable. Upon formal acceptance of the surrender of the
26 license, respondent will no longer be subject to the terms and conditions of probation. This
27 surrender constitutes a record of discipline and shall become a part of the respondent's license
28 history with the board.

1 Upon acceptance of the surrender, respondent shall relinquish his pharmacy technician
2 license to the board within ten (10) days of notification by the board that the surrender is
3 accepted. Respondent may not reapply for any license, permit, or registration from the board for
4 three (3) years from the effective date of the surrender. Respondent shall meet all requirements
5 applicable to the license sought as of the date the application for that license is submitted to the
6 board.

7 **9. Notification of a Change in Name, Residence Address, Mailing Address or**
8 **Employment**

9 Respondent shall notify the board in writing within ten (10) days of any change of
10 employment. Said notification shall include the reasons for leaving, the address of the new
11 employer, the name of the supervisor and owner, and the work schedule if known. Respondent
12 shall further notify the board in writing within ten (10) days of a change in name, residence
13 address and mailing address, or phone number.

14 Failure to timely notify the board of any change in employer(s), name(s), address(es), or
15 phone number(s) shall be considered a violation of probation.

16 **10. Tolling of Probation**

17 Except during periods of suspension, respondent shall, at all times while on probation, be
18 employed as a pharmacy technician in California for a minimum of twenty (20) hours per
19 calendar month. Any month during which this minimum is not met shall toll the period of
20 probation, i.e., the period of probation shall be extended by one month for each month during
21 which this minimum is not met. During any such period of tolling of probation, respondent must
22 nonetheless comply with all terms and conditions of probation.

23 Should respondent, regardless of residency, for any reason (including vacation) cease
24 working as a pharmacy technician for a minimum of twenty (20) hours per calendar month in
25 California, respondent must notify the board in writing within ten (10) days of cessation of work
26 and must further notify the board in writing within ten (10) days of the resumption of the work.
27 Any failure to provide such notification(s) shall be considered a violation of probation.

28 It is a violation of probation for respondent's probation to remain tolled pursuant to the

1 provisions of this condition for a total period, counting consecutive and non-consecutive months,
2 exceeding thirty-six (36) months.

3 "Cessation of work" means calendar month during which respondent is not
4 working for at least twenty (20) hours as a pharmacy technician, as defined in
5 Business and Professions Code section 4115. "Resumption of work" means any
6 calendar month during which respondent is working as a pharmacy technician for at
7 least twenty (20) hours as a pharmacy technician as defined by Business and
8 Professions Code section 4115.

9 **11. Violation of Probation**

10 If a respondent has not complied with any term or condition of probation, the board shall
11 have continuing jurisdiction over respondent, and probation shall automatically be extended, until
12 all terms and conditions have been satisfied or the board has taken other action as deemed
13 appropriate to treat the failure to comply as a violation of probation, to terminate probation, and
14 to impose the penalty that was stayed.

15 If respondent violates probation in any respect, the board, after giving respondent notice
16 and an opportunity to be heard, may revoke probation and carry out the disciplinary order that
17 was stayed. Notice and opportunity to be heard are not required for those provisions stating that a
18 violation thereof may lead to automatic termination of the stay and/or revocation of the license. If
19 a petition to revoke probation or an accusation is filed against respondent during probation, the
20 board shall have continuing jurisdiction, and the period of probation shall be automatically
21 extended until the petition to revoke probation or accusation is heard and decided.

22 **12. Completion of Probation**

23 Upon written notice by the board indicating successful completion of probation,
24 respondent's pharmacy technician license will be fully restored.

25 **13. Community Service**

26 Within sixty (60) days of the effective date of this decision, Respondent shall submit to the
27 Board or its designee, for prior approval, a community service program in which Respondent
28 shall provide free healthcare related services on a regular basis to a community or charitable

1 facility or agency totaling eighty (80) hours per year for the first two (2) years of probation.
2 Within thirty (30) days of Board approval thereof, Respondent shall submit documentation to the
3 Board demonstrating commencement of the community service program. A record of this
4 notification must be provided to the Board upon request. Respondent shall report on progress
5 with the community service program in the quarterly reports. Failure to timely submit
6 commence, or comply with the program shall be considered a violation of probation.

7
8 ACCEPTANCE

9 I have carefully read the Stipulated Settlement and Disciplinary Order. I understand the
10 stipulation and the effect it will have on my Pharmacy Technician License. I enter into this
11 Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree
12 to be bound by the Decision and Order of the Board of Pharmacy.

13 DATED: 5/14/12

14 YEE XIONG
15 Respondent

16 ENDORSEMENT

17 The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully
18 submitted for consideration by the Board of Pharmacy of the Department of Consumer Affairs.

19 Dated: May 15, 2012

20 Respectfully submitted,

21 KAMAL D. FARRIS
22 Attorney General of California
23 ARTHUR D. JAGGAR
24 Supervising Deputy Attorney General

25 BRIAN S. TURNER
26 Deputy Attorney General
27 Attorneys for Complainant

28 SA2011102297
Stipulation

Exhibit A

Statement of Issues No. 4167

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2 ARTHUR D. TAGGART
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11 **STATE OF CALIFORNIA**

12 In the Matter of the Statement of Issues Against:

13 **YEE XIONG**
212 E. 11th Street
14 Marysville, CA 95901

Case No. 4167

STATEMENT OF ISSUES

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold (Complainant) brings this Statement of Issues solely in her official
20 capacity as the Executive Officer of the Board of Pharmacy (Board), Department of Consumer
21 Affairs.

22 2. On or about August 25, 2010, the Board, Department of Consumer Affairs received
23 an application for a Pharmacy Technician License from Yee Xiong (Respondent). On or about
24 August 24, 2010, Respondent certified under penalty of perjury to the truthfulness of all
25 statements, answers, and representations in the application. The Board denied the application on
26 June 7, 2011.

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JURISDICTION

3. This Statement of Issues is brought before the Board, Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 475 of the Code states in relevant part:

"(a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:

"(2) Conviction of a crime.

"(4) Commission of any act which, if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license."

5. Section 480 of the Code states in relevant part:

"(a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:

"(1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

"(2) Done any act involving dishonesty, fraud, or deceit with the intent to substantially benefit himself or herself or another, or substantially injure another.

"(3) Done any act that if done by a licensee of the business or profession in question, would be grounds for suspension or revocation of license."

6. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

7. Section 493 of the Code states in relevant part:

1 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
2 the department pursuant to law to deny an application for a license or to suspend or revoke a
3 license or otherwise take disciplinary action against a person who holds a license, upon the
4 ground that the applicant or the licensee has been convicted of a crime substantially related to the
5 qualifications, functions, and duties of the licensee in question, the record of conviction of the
6 crime shall be conclusive evidence of the fact that the conviction occurred...."

7 8. Section 4301 provides in relevant part:

8 "The board shall take action against any holder of a license who is guilty of unprofessional
9 conduct. Unprofessional conduct shall include, but not be limited to, any of the following:

10 "(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or
11 corruption, whether the act is committed in the course of relations as a licensee or otherwise, and
12 whether the act is a felony or misdemeanor or not.

13 "(l) The conviction of a crime substantially related to the qualifications, functions, and
14 duties of a licensee under this chapter.

15 "(p) Actions or conduct that would have warranted denial of a license."

16 **FIRST CAUSE FOR DENIAL OF APPLICATION**

17 **(Conviction of a Crime)**

18 9. Respondent's application is subject to denial under sections 480(a)(1), 480(a)(2), and
19 480 (a)(3) in that on or about June 24, 2009, in a case captioned *People vs Yee Xiong*, 2009,
20 Sutter County Superior Court, Case Number CFR09-0742, Respondent was convicted by the
21 court following Respondent's plea of nolo contendere to Penal Code section 487(a), grand theft,
22 a misdemeanor. The circumstances are as follows:

23 10. Respondent was an employee at Toys R Us in Marysville, California. While working
24 Respondent kept gift receipts intended for customers and illegally took merchandise matching the
25 item or items on the gift receipt. Respondent then took the merchandise to different Toys R Us
26 and obtained cash refunds, gift cards or retained the items for personal use. Respondent engaged
27 in this activity on multiple occasions causing a loss to his employer totaling

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1 \$2,281.00. Respondent's activities were discovered through the Toys R Us employee fraud
2 detection program.

3 **SECOND CAUSE FOR DENIAL OF APPLICATION**

4 **(Cause for Denial If Done by Licensee)**

5 11. Respondent's application is subject to denial under sections 475(a)(4), 480(a)(3) and
6 4301(p) on grounds that the acts of Respondent would be grounds for denial if done by a licensee.

7 12. Paragraphs 9 and 10 are incorporated herein as though set forth at length.
8 Respondent's acts if done by a licensee would result in the revocation, suspension or other
9 discipline by the Board and as such are grounds for denial of the Respondent's application for a
10 license.

11 **THIRD CAUSE FOR DENIAL OF APPLICATION**

12 **(Unprofessional Conduct-Dishonesty)**

13 13. Respondent's application is subject to denial under sections 480(a)(2) and 4301(f) on
14 grounds that Respondent engaged in acts involving moral turpitude, dishonesty, fraud, deceit, or
15 corruption.

16 14. Paragraphs 9 and 10 are incorporated herein as though set forth at length. In
17 performing the acts described herein and engaging in criminal conduct, Respondent has
18 committed acts involving moral turpitude, dishonesty, deceit and corruption and as such are
19 grounds for the denial of Respondent's application for a license.

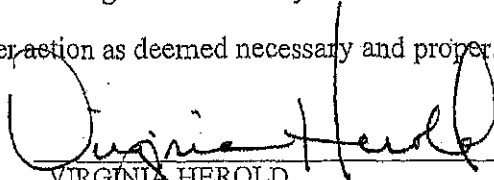
20 **PRAYER**

21 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
22 and that following the hearing, the Board of Pharmacy issue a decision:

- 23 1. Denying the application of Yee Xiong for a Pharmacy Technician License;
24 2. Taking such other and further action as deemed necessary and proper.

25 DATED: 1/21/12

26
27 SA2010102785
28 10778179


VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs, State of California
Complainant